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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,152	11/02/2000	Martin Hering	17857.4	4568

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Carl M Napolitano Ph D
ALLEN DYER DOPPELT MILBRATH & GILCHRIST P A
P O Box 3791
Orlando, FL 32802-3791

EXAMINER	
STRIMBU, GREGORY J	

ART UNIT	PAPER NUMBER
3634	

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/705,152	HERING, MARTIN	
	Examiner	Art Unit	
	Gregory J. Strimbu	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 December 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *62,64-66 and 86-93* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *62, 64-66, 86-93* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 62, 64, 66 and 86-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nica in view of Harrison et al. Nica discloses a turnstile 10 for defining a passageway 21, the turnstile having an arm 56, 58 movable into the passageway for blocking passage of a person passing therethrough, the arm moveable out of the passageway for permitting passage therethrough, the arm having at least a portion of an outside surface (not numbered, but defined by the outside surface of 56) defined by a generally circular cross section, a substantial portion of the arm outside surface, as defined by the generally circular cross section, is encircled with a sleeve 68 extending less than a full length of the arm (note that the sleeve 68 does not extend over the portion 58 of the arm). Nica is silent concerning advertising.

However, Harrison et al. discloses providing a turnstile with a clear covering 27, providing advertising 30 on the interior surface of the covering such that the advertising covers a substantial portion of the covering for viewing by the person passing through a passageway when the arm is positioned therein.

It would have been obvious to one of ordinary skill in the art to provide Nica with advertising means, as taught by Harrison et al., to enable advertisers to more prominently display advertising.

Additionally, the manufacture of the apparatus disclosed by Nica in view of Harrison et al. would inherently lead to the method steps recited in claims 62, 64, 66 and 86-93.

Claims 62, 64-66 and 86-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison et al. in view of Nica. Harrison et al. discloses a turnstile (not generally numbered, but seen in figure 1) defining a passageway (not shown, but see lines 1-19 of column 1), the turnstile having an arm 3 movable into the passageway for blocking passage of a person passing therethrough, the arm movable out of the passageway for permitting passage therethrough, the arm having an outside surface (not numbered, but best seen in figure 5), a sleeve 27, advertising 30 carried by the sleeve, wherein the advertising covers a substantial portion of the sleeve and is positioned for viewing by the person passing through the passageway when the arm is positioned therein, a collar 28, each of the arms carries different indicia as shown in figure 2. Harrison et al. is silent concerning the arm having a generally circular outside surface in cross section and the sleeve encircling a substantial portion of the arm.

However, Nica discloses a turnstile comprising arms 56, 58 each having a generally circular outside surface in cross section (not numbered, but seen as the outside surface of 56) and sleeves 68 encircling a substantial portion of the arm outside surface defined by the generally circular cross section and extending less than a full length of the arm since the portion of the arm 58 extends beyond the sleeve.

It would have been obvious to one of ordinary skill in the art to provide Harrison et al. with tubular arms and tubular sleeves, as taught by Nica, to improve the aesthetic appearance of the turnstile.

Additionally, the manufacture of the apparatus disclosed by Harrison et al. in view of Nica would inherently lead to the method steps recited in claims 62-85.

Response to Arguments

Applicant's arguments filed December 23, 2004 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning Nica, the examiner respectfully disagrees. The arms 18 of Nica comprise three parts, a core 56, an extension piece 58 and a sleeve 68. Since the sleeve 68 does not extend over the extension piece 58 it extends less than a full length of the arm 18. Additionally, Nica sets forth any material suited to the desirable end of aesthetic enhancement and gives stainless steel as only one example. It is the examiner's position that a clear plastic with aesthetically pleasing advertising falls within the range of materials set forth by Nica.

With respect to the applicant's arguments concerning the motivation to combine the references of record, the examiner respectfully disagrees. The rationale to modify or combine the prior art does not have be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific

principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Since the applicant has failed to address the reasoning/rationale supplied by the examiner as to why the modification would have been obvious, the applicant's arguments are not persuasive.

In response to applicant's argument that the combination of Harrison and Nica would produce sheath covering arms having downwardly projecting sidewalls, a central reinforcing rib and parallel lips defining grooves for receiving the sheath, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Finally, the applicant's "evidence" of success is not persuasive. Establishing a long felt need requires objective evidence that an art recognized problem existed in the art for a long period of time without solution. Thus, the need must have been a persistent one that was recognized by those of ordinary skill in the art. *See In re Gershon*, 372 F.2d 535, 539, 152 USPQ 602, 605 (CCPA 1967). The declaration of Martin Hering and the exhibits A-Q fail to provide any evidence that an art recognized problem existed in the art for a long period of time without solution. While fulfillment of a long felt need is some evidence of non-obviousness, it is not necessarily conclusive evidence. *See Leinoff v. Louis Milona & Sons, Inc.*, 726 F.2d 734, 220 USPQ 845 (Fed.

Cir. 1984). Finally, it should be noted that none of the evidence presented by the applicant addresses the combination of the teachings of Harrison et al. and Nica.

It is suggested that the applicant amend the claims to recite the advertising covers a substantial portion of the arm between the arm and the sleeve to better define the invention over the art of record.

Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
March 4, 2005